Writ Petition no.12244(S/S) of 1996-old number
Writ Petition no.3943(S/S) of 2001-New number

Daood Husain---- Petitioner

Versus

Prescribed Authority, Labour Court, Dehradun and others Respondents

Hon'ble M.M. Ghildiyal, J.

By means of this writ petition the petitioner has challenged the order dated 24.07.1995 of Labour Court, Dehradun dismissing the claim of the petitioner.

Heard Sri Pankaj Miglani learned counsel for the petitioner, Sri I.P.Kohli learned counsel for respondent no.2 and learned Standing Counsel.

Brief fact of the case are that the petitioner was appointed as a peon on 3.3.1962 in Nagar Palika, Haridwar and was confirmed on 22.04.1967 on the said post. A disciplinary inquiry was initiated against the petitioner for the charges that he has manipulated the record of Nagar Palika, he was absent from his duties without any leave from the competent authority and for supplying of confidential information to the public. For the charges the petitioner was served charge sheet dated 2.06.1984 and another charge sheet was also served on 15.06.1984. the Executive Officer of Nagar Palika appointed the Accountant as inquiry officer.

The petitioner has submitted his reply to the charges on 21.06.1984 denying the charges. The petitioner was also placed under suspension on 31.07.1984. The inquiry officer completed the inquiry and submitted his report to the disciplinary authority holding that the charges leveled against the petitioner have been proved.

Thereafter a show cause notice dated 31.1.1985 was issued to the petitioner by the disciplinary authority. The petitioner against the show cause notice issued by the disciplinary authority preferred a writ petition before Hon'ble High Court of Judicature at Allahabad which was dismissed on 8.02.1985 holding that the Executive Officer has yet to pass an order after considering the entire material on record and in the opinion of the court at that stage the petition was premature.

The Executive Officer in view of the findings recorded by the inquiry officer after going through the inquiry report issued show cause notice to the petitioner and ultimately on 10.04.1985 passed an order of punishment dismissing the petitioner from service. This order of punishment was challenged by the petitioner before the Labour Court, Dehradun and the Labour Court on 24.07.1995 dismissed the claim petition preferred by the petitioner holding that the order passed by the disciplinary authority was perfectly legal. It is this order which has been challenged by the petitioner by means of this writ petition.

The learned counsel for the petitioner has pressed three submissions. The first submission is that the petitioner had demanded certain documents which were necessary for giving reply to the charges were not supplied to the petitioner. The second submission of the petitioner is that no copy of the inquiry report was supplied to the petitioner alongwith the show cause notice issued by the disciplinary authority and the third submission is that the punishment awarded was not commensurate with the gravity of the charges.

So far as the first submission is concerned from the pleadings and the record available as well as from the impugned order, it is clear that the petitioner moved an application to supply certain documents in reply of which the inquiry officer asked the petitioner either to inspect the record and in case he wants copies of certain documents he may obtain the same by applying and depositing the requisite fee. However, he did not avail the opportunity provided by the inquiry officer.

The reply submitted by the petitioner against the charges as has been recorded by the labour court was too very vague and the petitioner has used disrespectful language. The Apex Court in the case of **Bombay State v. Nurul Latif Khan, reported in AIR 1955 SC 262** he held that the language of the reply or defence statement should be proper. While giving explanation the petitioner has stated in its reply.

''..... मेरे खिलाफ झूठी व निराधार शिकायतों पर आप तुरन्त अमल करते हैं और मेरे द्वारा जो शिकायत की जाती है, उसको नजर अन्दाज कर देते है..... हम आह भी करते है तो हो जाते है बदनाम, वो कत्ल भी करते है तो चर्चा नहीं होता। ..... आप इसलिए अधिकारी नहीं बनाये गये कि आप किसी हिन्दू के नुकसान करने पर ऐक्शन लें। केवल आपको इसलिए अधिकारी बनाया गया है कि मुसलमान के खिलाफ ही ऐक्शन लें, कृप्या मुझे उस धारा से अवगत कराया जाये''

The second submission of the petitioner that a copy of the inquiry report was not supplied to him is also not sustainable. The learned counsel for the petitioner has placed reliance on the case of **Union of India Versus Mohd. Ramzan Khan, reported in AIR 1991 Supreme Court,471.** He has placed reliance on paragraph no.18 of the aforesaid judgment which is quoted as under :-

> "We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation to it he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenged hereafter."

Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad Versus B.Karunakar and others, reported in (1993) 4 Supreme Court cases 727** while dealing the effect of non-supply of copy of inquiry report to the delinquent officer has held as under :-

> " Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts, and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. It after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present."

It is not disputed that the petitioner was not supplied a copy of inquiry report prior to his approaching this court. However, the respondents alongwith the counter affidavit has filled the inquiry report and the petitioner has said nothing about the inquiry report even in his rejoinder affidavit. The

petitioner was given opportunity to show how his case was prejudiced because of non-supply of report. The petitioner could not show any prejudice because of non-supply of the report.

Further as held by the Apex Court in the case of **B.Karunakar** (supra) the law laid down in the case of Mohd. Ramzan Khan prospective in operation to prevent unsettlement of the settled position to prevent the administrative chaos and to meet the end of justice.

The Apex Court clarifying the implementation of the law laid by in Mohd. Ramzan's case has held in paragraph no.75 as under:-

> "Mohd. Ramzan Khan ratio giving the benefit to him and companion appellants was valid in law and not, therefore, per incurium and was legally given the relief. The contention of the counsel for the employees/Government servants that the denial of Ramzan Khan ratio to the pending matters offend Article 14 is devoid of substance. It is seen that placing reliance on the existing law till date of Ramzan Khan the employees treated that under law they had no obligation to supply a copy of the enquiry report before imposing the penalty. Reversing the orders and directing to proceed from that stage would be a needless heavy burden on the administration and at times encourage the delinquent to abuse the office till final orders are passed. Accordingly I hold that the ration in Mohd. Ramzan Khan case would apply prospectively from the date of the judgment only to the cases in which decision are taken and orders made from that date and does not apply to all the matters which either have become final or are pending decision at the appellate forum or in the High Court or the Tribunal or in this Court."

The case of Mohd. Ramzan Khan was decided on20.11.1990 whereas the impugned order of dismissal was passed on 10.04.1985 and as such the petitioner cannot take benefit of the case of Mohd. Ramzan Khan.

The petition has further placed reliance on the case of S.N.Kaushik Vs. B.H.E.L. and others, in writ petition no. 1455 (S/B) of 2002,decided by High Court of Uttaranchal on 02.04.2003. This case is also not applicable to the facts of the present case as in the case of S.N.Kaushik the petitioner has challenged the order dated 13.02.2002 inflicting the major punishment on the petitioner. In this case the order of punishment dated 13.04.2002 was

Passed after the decision in the case of Mohd. Ramzan Khan and as such the Hon'ble Judge has rightly extended the benefit of Mohd. Ramzan's case to the petitioner. The judgment of Hon'ble Supreme Court in **B.Karunkar's** case was also followed by the Apex Court in another case, **State Bank of India and others Versus Samarendra Kishore Endow and another, reported in 1994 AIR SCW 1465 .** Hon'ble Supreme Court while dealing with the issue has held in paragraph no.4 as under:-

> " In this appeal, Mr. Goswmai, learned counsel for the appellant-bank assailed the correctness of all the said three findings. So far as the first ground given by the High Court is concerned, it must be held to be not sustainable in law in view of the recent decision of the Constitution Bench of this Court in Managing Director, ECIL Hyderabad Vs. B. Karunakar (1993)6 JT (SC)1: 1994 AIR SCW 1050 inasmuch as the order of punishment in this case is prior to 20th November 1990."

The third submission of the petitioner that the punishment awarded was not commensurate with the gravity of the charges. This Court under Article 226of the Constitution of India cannot interfere with the punishment awarded by the disciplinary authority on the ground that the punishment awarded is not commensurate with the gravity of charges inas much as the High Court is not exercising jurisdiction of appeal. Further the petitioner has attained the age of superannuation long back.

In view of the above reasons recorded I find no merit in the case. The writ petition is dismissed. No order as to costs.

July 14, 2003
MPS

(Rajesh Tandon, J.)